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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of SBC Communications, Inc.,	)	
Pursuant to Section 271 of the	)	CC Docket No. 97-121
Telecommunications Act of 1996	)	
to Provide In-Region, InterLATA Services	)	
in Oklahoma	)	

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

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May 27, 1997

SUMMARY

There are myriad reasons that SBC's application for in-region interLATA authority in Oklahoma cannot be granted. The most significant, however, is that SBC, despite specific requests for actual interconnection, physical collocation and other checklist items, has yet to meet those requests. Even if the Commission were to adopt the most outlandish of the Bell Companies' proposed interpretations of Section 271, it is not possible to grant SBC's application in light of this fundamental failure to meet actual demand for checklist items. While the Commission also should reject the Bell Companies' strained views of the workings of Section 271, it is not necessary to reach that issue to deny this application.

Almost every commenter that hopes to provide local telephone service describes ways in which SBC has impeded entry into the Oklahoma marketplace. Cox's inability to obtain physical collocation was echoed by Dobson Wireless and Brooks Fiber. MCI noted that, like Cox, it has had difficulty in obtaining access to telephone numbers, and several parties described how the lack of permanent pricing for any service precludes a finding that the checklist has been satisfied. Other parties also highlighted their inability to obtain unbundled elements, the continuing unavailability of access to operational support systems and the unacceptable service interruptions caused by SBC's woeful implementation of interim number portability. Any one of these elements would be sufficient to require denial of SBC's application, because checklist compliance must be complete. Collectively, they demonstrate that SBC has made no commitment to local telephone competition and that the Commission should adopt specific performance standards to prevent Bell Companies from seeking interLATA authority when they have not fulfilled the checklist requirements.

The Commission need not reach any of the statutory interpretation issues raised by this application, but it should reject the Bell Company interpretations of Section 271 if it does reach those issues. In particular, the Commission should hold that "Track B" is not available to SBC in this case because it has received requests from carriers that intend to provide "Track A" qualifying service. The Bell Companies depend on unreliable types of legislative history to support their contrary interpretation, rather than the authoritative conference report language that supports more reasonable views of the workings of Section 271. In addition, the basic structure of the statute contradicts the Bell Company interpretation, which would have permitted Bell Companies to qualify under Track B even before any arbitrations were completed under Section 252. Finally, if the Commission should address statutory interpretation issues, it should clarify that the term "own local exchange service facilities" in Section 271(c)(1)(A) does not refer to unbundled elements. This interpretation is consistent with the statute and with the plain intent of Congress, as expressed repeatedly in the legislative history of Section 271.

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Cox Communications, Inc. ("Cox") hereby submits its reply comments on the above-captioned application of SBC Communications, Inc. ("SBC").

INTRODUCTION

Without a trace of irony, SBC and the other Bell Operating Companies ("BOCs") argue in one breath that (1) the Commission must hasten to authorize SBC's entry (and theirs as well) into the interLATA market — in which AT&T, MCI, Sprint and myriad others now compete — because that market is not currently competitive; and (2) such authorization is appropriate under Section 271 because, although SBC still serves virtually 100 percent of the local exchange market in Oklahoma, SBC's promises to provide all elements of the competitive checklist to Cox and others who have requested interconnection are sufficient to ensure effective competition in that market.

The BOCs do not and cannot rebut the fundamental fact that no competitive local exchange carrier is yet providing service to any meaningful extent in Oklahoma. Indeed, they even suggest that *because* no CLEC is yet providing service, Track A of Section 271

does not apply, so that SBC's application should be approved on the basis of its mere statement of generally offered terms and conditions pursuant to Track B. And they suggest that, in any event, bare contractual agreements to provide those checklist elements specifically requested by prospective competitors are all that is required to gain interLATA authorization pursuant to Track A.

Cox and other parties (including the Department of Justice) have explained why, once one or more CLECs have requested interconnection, the relevant statutory test must be whether or not the BOC *is providing* all elements of the competitive checklist to such CLECs under Track A — not whether or not the BOC has *offered* to provide such elements under Track B. In fact, once requests for interconnection have been made, the best evidence of whether checklist elements are in fact generally available is whether or not the requesting CLECs have received them and can provide competitive service. It would make no sense to allow BOCs to proceed under Track B on the basis that no CLEC is yet providing service to business and residential subscribers, because the most likely reason why no CLEC is yet providing service is that the BOC has not yet fulfilled its promises to provide the checklist elements. As legislative history cited by several parties shows, Congress intended no such absurd result.

Those parties that, unlike the BOCs, *have* examined not only SBC's promises but also SBC's performance in negotiating and implementing interconnection agreements have provided ample evidence that, in fact, SBC has *not* provided or generally made available the elements of the competitive checklist to parties seeking interconnection — pursuant to Track A *or* Track B. It is obvious that there is virtually no competition in SBC's local exchange

market. What the evidence in the record confirms is that SBC's recalcitrance in providing the requisite elements of interconnection is frustrating rather than facilitating the transition to competition in that market. And what this, in turn, means is that SBC's application should be denied. SBC has not fully implemented the competitive checklist, as required by Section 271(d)(3)(A). Moreover, granting the application would eliminate any incentive for SBC to open its market to competition — a result that the Commission cannot reasonably find to be in the public interest, as required by Section 271(d)(3)(C). Indeed, SBC's actions demonstrate the importance of adopting objective performance standards to evaluate BOC checklist compliance.

I. SBC HAS NOT PROVIDED ELEMENTS OF THE COMPETITIVE CHECKLIST TO PARTIES THAT REQUESTED THEM.

Compliance with the competitive checklist requires that each of its elements be provided.[1/] The Commission may not grant a Section 271 application unless it determines, with respect to Track A, that the applicant has "fully implemented"[2/] the checklist or that, with respect to Track B, the BOC's statement offers "all of the items"[3/] in the checklist. The BOCs contend that they cannot be expected to have provided elements of the checklist that no competitor has requested; otherwise, they complain, competitors could thwart their entry into the interLATA market simply by refusing to purchase particular elements. The Department of Justice, however, suggests a reasonable standard for determining whether a BOC should

1/ 47 U.S.C. § 271(c)(2)(B).

2/ 47 U.S.C. § 271(d)(3)(A)(i).

3/ 47 U.S.C. § 271(d)(3)(A)(ii).

be deemed to be providing a particular element that has not been requested by any competitor:

> A BOC is providing an item, for purposes of checklist compliance, if the item is available both as a legal and practical matter, whether or not any competitors have chosen to use it. If a BOC has approved agreements that set forth complete prices and other terms and conditions for a checklist item, and if it demonstrates that it is willing and able promptly to satisfy requests for such quantities of the item as may reasonably be demanded by providers, at acceptable levels of quality, it still can satisfy the checklist requirement with respect to an item for which there is no present demand.[4/]

In this case, however, it is not necessary to apply the Justice Department's test because virtually all elements of the checklist have been requested by one or more parties, and the evidence shows that, whether or not SBC is *capable* of providing them upon demand,[5/] it consistently *has not* provided all of the elements that have been requested. The comments of other parties seeking interconnection confirm the checklist deficiencies previously identified by Cox with respect to physical collocation, nondiscriminatory access to numbers, and cost-based rates. As Cox details below, other parties also identify additional checklist elements that SBC has failed to provide or make available.

As demonstrated in its comments, Cox's interest in the Oklahoma local exchange market is not academic. Cox has invested enormous financial and human capital for a company of its size to provide telecommunications alternatives and challenge ILEC monopolies. In Oklahoma,

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4/ Department of Justice Evaluation at 23.

5/ The Department of Justice has, nevertheless, shown that SBC *is* currently incapable of providing certain checklist elements. For example, "SBC has not demonstrated that its wholesale support processes are sufficient to make resale services and unbundled elements practicably available when requested by a competitor." *Id.* at 30.

for example, Cox has installed a Northern Telecom DMS-500 switch that is operational and internally tested.[6/] Cox's intent is to provide commercial service to residential and business customers using its upgraded cable television plant in Oklahoma City before the end of 1997. Cox's ability to commence commercial operation, however, is critically dependent upon SBC's willingness and cooperation in providing timely physical collocation, adequate numbering resources, interim number portability and necessary OSS functionality. This minimum level of cooperation is achievable, as has been proven elsewhere.[7/]

A. Physical Collocation.

In its initial comments on SBC's application, Cox demonstrated that SBC's response to Cox's request for physical collocation was woefully inadequate. As Cox showed, SBC (1) imposed a wholly unreasonable advance notice requirement for the construction of collocation facilities; (2) unreasonably delayed the process of responding to Cox's request and agreeing to the terms and conditions of collocation; and (3) initially established prices for collocation that were so high as to deter entry, and ultimately insisted on prices that were unreasonably high.[8/]

6/ *See* Declaration of Alexander V. Netchvolodoff, attached hereto as Exhibit 1. It is not possible for Cox to perform a switched, interconnected test of its switch in the absence of interconnection from SWBT.

7/ *Id.* Cox's California telecom affiliate is, in fact, launching interconnected, cable-facilities based service this week to a group of "friendly" testers in Orange County, California. Assuming all goes according to plan, Cox will be offering commercial service to both residential and business customers in June. *Id.*

8/ *See* Cox Comments, Exhibit B (Declaration of Jeff Storey).

What the comments of other parties show is that Cox's experience was not unique: SBC consistently has refused to provide physical collocation on reasonable terms and conditions to parties that requested it. The experience of Dobson Wireless, Inc. ("Dobson"), for example, appears to have been quite similar to Cox's. Like Cox, Dobson apparently found itself, more than four months after requesting collocation, locked in protracted negotiations with SBC over the terms and conditions of such collocation.[9/] Also like Cox, Dobson "may have to swallow what seems like an outrageous quote" for obtaining collocation, since the quoted price was "offered as valid for 45 days only on a 'take it or leave it' basis, and [] Dobson cannot begin to do significant business in Oklahoma City until it is collocated . . . ."[10/]

Brooks Fiber Properties also cannot seem to obtain the physical collocation that it requested from SBC almost a year ago. Brooks states that "[n]one of the necessary collocations is operational at this time." It notes that "[i]n two SWBT Oklahoma City central offices, Brooks is pursuing a new contractual form of virtual collocation as an alternative to physical collocation, *since Brooks has been informed that space for physical collocations is not available.*"[11/] But virtual collocation is neither what Brooks requested, nor what Brooks is entitled to — nor does it appear to be a proven or acceptable substitute for physical collocation. As Brooks points out, it previously obtained virtual collocations from

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9/ *See* Comments of Dobson Wireless, Inc. in Support of Motion to Dismiss at 1-3.

10/ Comments of Dobson Wireless, Inc. in Opposition to Application at 6-7.

11/ Comments of Brooks Fiber Properties, Inc. at 10 n.6 (emphasis added).

SWBT for other purposes, but "use of unbundled loops through those virtual collocations is not technically or economically feasible."[12/]

The bottom line, as the Department of Justice points out, is that there is "*no* working physical collocation arrangement in any SWBT central office in Oklahoma . . . ."[13/] As the comments show, this is not because of an absence of requests for such collocation. And it is not because the parties requesting such collocation have dallied or acted in bad faith in implementing it. The reason why there is no physical collocation is that SBC has either refused to provide it or has engaged in a pattern of conduct that delays and frustrates the ability of competitors to obtain such collocation at reasonable prices and on reasonable terms and conditions.

The Commission also should recognize that physical interconnection and physical collocation are important prerequisites to compliance with the remainder of the checklist. Until Cox is physically collocated with SBC's facilities in Oklahoma City, Cox will be unable to determine whether, in fact, SBC provides unbundled elements, access to operational support systems, number portability or any of a host of other checklist items in a reasonable, non-discriminatory fashion. Indeed, Brooks Fiber's inability to obtain unbundled loops without physical collocation highlights the interdependence of physical collocation and the other checklist elements.[14/]

12/ *Id.* n.6.

13/ Justice Department Evaluation at 31 n.41 (emphasis added).

14/ For these reasons, Cox agrees with the Department of Justice that the Oklahoma Corporation Commission's (OCC's) split determination of SBC's checklist compliance is not

(continued...)

B. Nondiscriminatory Access to Telephone Numbers.

Cox also showed in its initial comments that SBC had, through its own willfulness or incompetence, refused to allocate sufficient telephone numbers to enable competing carriers to meet anticipated demand. This refusal purportedly was required by an impending shortage of available NXX codes that had resulted in an eleventh hour declaration of the 405 area code as a "jeopardy NPA" by SBC. As Cox pointed out, any such shortage, to the extent that it existed, was a situation of SBC's own making and, in any event, could have been remedied by means other than refusing to make adequate numbers available to SBC's potential competitors. Moreover, the Central Office Code Assignment Guidelines do not permit code administrators to rescind reservation requests in response to a jeopardy declaration.[15/] In these circumstances, SBC's conduct is directly at odds with its assertion that its actions complied with industry standards and the checklist obligation to provide nondiscriminatory access to numbers.

MCI confirms that this is precisely the case. As MCI points out,

> [i]t is SWBT's responsibility as NXX administrator to anticipate such jeopardy situations and implement code relief in a timely

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14/ (...continued)
entitled to much, if any, weight, as the OCC failed entirely to make any findings as to the practical availability of any required checklist item, including collocation. *See* DOJ Comments at 25. Far more meaningful are the fact-based determinations that SBC had not complied with the checklist by the presiding Administrative Law Judge, the state Attorney General, the OCC staff and the dissenting OCC Commissioner. *Id.* at 25-26.

15/ Rather, the guidelines call for reservations to be honored unless it is necessary to assign reserved codes in response to specific requests. *See* Industry Numbering Committee Central Office Code Assignment Guidelines, INC 95-0407-008 (Sep. 1996 Rev.), § 8.4.D

> manner to avoid numbering shortages. Numbering shortages have a far greater impact on would-be competitors than on incumbent providers, as incumbents already have NXX codes covering their territory. Without access to NXX's, CLECs are entirely shut out from competing for any customers until a new area code is provided, which may take more than a year to accomplish. SWBT has not shown that it has implemented checklist item (ix) by effectively managing NXX resources to permit a fair opportunity for CLEC competition.[16/]

C. Cost-Based Rates.

The competitive checklist requires that a BOC seeking interLATA authorization comply with the interconnection requirements of sections 251(c)(2) and 252(d)(1). Those sections, in turn, require that interconnection be provided on rates, terms and conditions that are determined by the relevant State commission to be nondiscriminatory and cost-based under the standards of Section 252(d). As Cox pointed out in its initial comments, the OCC has made no such finding with respect to the rates at which SBC currently offers and provides interconnection and related services. Those rates have been approved by the OCC in its AT&T arbitration proceeding only as "interim rates," pending its review of cost studies submitted by SBC. As the Department of Justice notes,

> [t]he OCC arbitrator's decision on the AT&T application did not recommend 'any particular methodology or cost study be adopted at this time,' and the OCC *did not even review cost studies in the arbitration to determine the interim rates.*[17/]

16/ MCI Comments at 13-14 (citations omitted).

17/ Department of Justice Evaluation at 61 (emphasis added). *See also, e.g.,* Comments of MCI Telecommunications Corporation at 7-9; Petition to Deny of Sprint Communications Company at 21-22; Comments of Dobson Wireless, Inc. at 2-5; Comments of National Cable Television Association at 19-20; Opposition of Brooks Fiber Properties, (continued...)

Until the specific finding required by Section 251(d)(2) has been made by the OCC, the Commission cannot determine that SBC has fully implemented the competitive checklist.[18/]

In urging that SBC's application be granted, the OCC relies on the arbitrator's assumption that the rates would be subject to a "true-up" after cost-based rates are finally determined.[19/] Other parties, however, have explained why the prospect of a true-up is in no way tantamount to the establishment of cost-based rates. First, CLECs cannot be expected to develop business plans and finance the implementation of such plans without knowing the price of the elements of interconnection that they will be required to purchase from SBC. As MCI correctly points out, the interim prices approved by the OCC "are hardly prices at all, but are the equivalent of requiring new entrants to post a bond until actual prices are known."[20/]

Second, the OCC arbitrator explicitly intended that the interim prices be *higher* than cost-based prices, because a true-up that resulted in effective refunds "would be easier to explain to customers rather than trying to explain a lower price being trued-up to a higher

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17/ (...continued)
Inc. at 30; Comments of AT&T at 26-28.

18/ As the Department of Justice notes, "SBC has not presented an adequate evidentiary record here from which the Commission could determine if the interim arbitrated and SGAT rates in Oklahoma are cost-based, even assuming that the Commission were willing to engage in that inquiry now rather than awaiting the results of the final Oklahoma pricing proceeding." Department of Justice Evaluation at 63.

19/ Comments of Oklahoma Corporation Commission at 9.

20/ Comments of MCI Telecommunications Corporation at 7. *See also* Comments of Dobson Wireless, Inc. at 5. ("The prospect of a true-up at some uncertain future date, in some uncertain amount, is simply not a basis for the type of investment decisions that have to be made in order to establish significant, facilities-based competition.")

price."[21/] The effect of this decision is to raise the short-term costs of entry and diminish the funds available to CLECs once they have obtained interconnection — an outcome that can hardly be deemed to be competitively neutral or provide the essential underpinnings of local competition. Subsequent refunds will at best ensure that CLECs ultimately pay no more than a cost-based rate for the interconnection elements that they purchase. But the delay and uncertainty irreparably hinders the ability of CLECs to challenge and erode SBC's monopoly in the local exchange market.

D. Other Checklist Elements.

In addition to confirming SBC's non-compliance with the checklist elements identified in Cox's initial comments, other commenting parties have highlighted similar patterns of non-compliance — often willful noncompliance — with most of the other checklist elements. The comments set forth the difficulties that various parties have encountered in obtaining interim number portability;[22/] nondiscriminatory access to poles;[23/] resale;[24/] unbundled switching;[25/]

21/ Oklahoma Corporation Commission Report and Recommendations of the Arbitrator, Case No. PUD 960000218, released December 12, 1996 at 19-20.

22/ Opposition of Brooks Fiber Properties, Inc. at 22-25; Petition to Deny of Sprint Communications Company at 27-29.

23/ Petition to Deny of Sprint Communications Company at 29-31.

24/ Opposition of U.S. Long Distance at 4-12; Comments of MCI Telecommunications Corporation at 5.

25/ Comments of MCI Telecommunications Corporation at 5, 11; Comments of Competition Policy Institute at 7.

unbundled transport;[26/] unbundled loops;[27/] unbundled elements;[28/] dialing parity;[29/] access to databases;[30/] and white page directory listings.[31/]

SBC's repeated and ongoing failure to provide checklist items also demonstrates the importance of the adoption of objective performance standards by which the Commission can evaluate BOC applications for in-region interLATA authority. SBC has attempted to make its case by arguing that it "offers" the required services, even though the offer to provide many of the checklist elements exists only on paper. This absurd claim is made possible only because the Commission has promulgated no objective standards for checklist compliance. The Commission can avoid the unnecessary exercise of having to consider future, equally unreasonable applications by adopting specific standards that BOCs have to meet to demonstrate fulfillment with each of the checklist requirements, including showings of the actual provision of requested services and compliance with minimum standards of service quality. At a minimum, these standards should include a requirement that the BOC show that it is providing checklist elements in compliance with the basic provisions of

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26/ Comments of MCI Telecommunications Corporation at 5.

27/ *Id.* at 10; Comments of Competition Policy Institute at 7.

28/ Comments of MCI Telecommunications Corporation at 10-11; Comments of Competition Policy Institute at 7.

29/ Comments of MCI Telecommunications Corporation at 12; Comments of Competition Policy Institute at 7.

30/ Comments of MCI Telecommunications Corporation at 12-13; Comments of Competition Policy Institute at 7.

31/ Comments of Competition Policy Institute at 7.

Section 251(c)(2)(C), including that interconnection be "at least equal in quality to that provided by the [BOC] to itself," a standard that SBC plainly has not met.

Performance standards for all checklist items are important because every competitor will require multiple checklist items. For instance, even as a facilities-based provider, Cox will require interim number portability, access to 911 and E911 services and the ongoing ability to obtain necessary interconnection facilities, and obtaining these functionalities will require usable access to proven and reliable operational support systems. Thus, even when Cox obtains physical collocation and physical interconnection, it will depend on SBC's continuing provision of other checklist items for the foreseeable future. The only way to measure SBC's ongoing efforts is to use concrete performance standards that measure results, not rhetoric. Indeed, the Justice Department has urged the Commission to adopt this approach by reviewing Bell Company "performance measures" against related "performance benchmarks."[32/]

In sum, the comments make clear that, as a matter of fact, the necessary elements of a competitive local exchange market are not at all in place — and the reason this is so is that SBC has failed to offer or make available most elements of the competitive checklist. What this means is that even if, as a matter of law, SBC could rely on Track A *and* Track B to fulfill its checklist obligations, as SBC and the BOCs contend, it still could not demonstrate that it has met those obligations. In any event, as we now show, there is no basis whatever for the notion that Track B is available to SBC in Oklahoma.

32/ *See* Addendum to Justice Department Evaluation at 4-6.

II. THE COMMISSION CANNOT RELY ON THE ERRONEOUS INTERPRETATIONS OF SECTION 271 POSITED BY THE BELL OPERATING COMPANIES.

As shown above, because SBC fails to meet the basic requirements of Section 271 under any plausible interpretation, the Commission need not reach the question of how that section should be interpreted in this proceeding. To the extent that the Commission determines it should address statutory interpretation issues, however, it also is plain that SBC and the Bell Operating Companies that filed comments rely on interpretations of Section 271 that must be rejected. As shown below, the BOCs depend on unreliable legislative history and on a reading of Section 271(c)(1)(B) that is inconsistent with the rest of the 1996 Act. Moreover, the Commission should recognize that unbundled elements should not be treated as a competing carrier's "own local exchange service facilities" for the purpose of determining compliance with Track A.

If the Commission had any doubts regarding the strength of the BOC statutory interpretation arguments, those doubts should be resolved by the nature of the legislative history cited by the BOCs. Rather than relying on the Conference Report or other reliable indicators of congressional intent, the BOCs rely principally on the floor statements of individual members. Indeed, although the BOC comments do not so indicate, the extensive statements of Congressmen Paxon and Hastert cited by the BOCs were not made during the floor debates on the 1996 Act, but were added at a later date as "extended remarks." Thus, they are entitled to little or no weight. The fact of the matter is that these statements are contradicted by the Conference Report, which is entitled to much more significant weight

than members' floor statements.[33/] The Conference Report language, cited by AT&T and others, shows that Track A was the preferred approach for Section 271 proceedings, and that Track B was intended to be available only as a "safety valve" under limited circumstances.[34/]

The basic structure of the statute also contradicts the BOC claims that Track B should be available in this case. As the Justice Department described, the BOC interpretation of Section 271(c)(1)(B) is implausible because it is inconsistent with the timing of interconnection negotiations under Section 252.[35/] Under the scenario proposed by SBC and other BOCs, they all could have become eligible to file applications for interLATA authority through Track B on September 8, 1996, so long as no entity was providing facilities-based local exchange service to both business and residential subscribers. This interpretation is belied by the timeline of Section 252, which did not require any arbitrations to be completed until November, 1996, a full two months later.[36/] It would make no sense for Congress to give the BOCs the power to apply to enter the long distance marketplace before the first

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33/ Among other things, the Commission can reasonably conclude that Congress relied on the Conference Report in its own evaluation of the meaning of Section 271, while it is apparent that Congress could not have relied on statements inserted into the *Congressional Record* weeks after the 1996 Act had been signed. *See Garcia v. United States,* 469 U.S. 70, 76 (1984) (committee reports are "the authoritative source" of legislative intent" and Court "eschew[s] reliance on the passing comments of one Member"); *see also* AT&T Comments at 19.

34/ *See* AT&T Comments at 16-19.

35/ Justice Department Evaluation at 8-20.

36/ As events have shown, in practice the completion of an arbitration proceeding does not mean that an interconnection agreement is in place. Rather, lengthy negotiations often follow. For instance, despite completing an arbitration in November, AT&T and NYNEX did not file their interconnection agreement with the New York Public Service Commission until May 20, 1997.

deadline for completion of arbitrations, if for no other reason than that all incentive for BOC cooperation in interconnection negotiations would be removed by such an interpretation.

The current BOC interpretation of Section 271(c)(1)(B) also is contrary to their own behavior. If the BOCs really believed that Track B became available to them if no carrier was providing competing business and residential local exchange service on September 8, 1996, they would have filed their statements of generally available terms by the middle of 1996 and would have applied for interLATA authority on December 8, the first day such applications would have been permitted. No BOC had the temerity to follow that course, undoubtedly because they all are aware that Section 271(c)(1)(B) is triggered by a failure of other carriers to request interconnection, not by the inability of competing carriers to obtain the interconnection arrangements they need to compete.

Finally, as Cox and other commenters (including the Department of Justice) have amply demonstrated, there is no need to engage in additional statutory interpretation to dispose of SBC's application. However, to the extent that the Commission deems it appropriate to address statutory interpretation issues here, it should clarify that the term "own local exchange service facilities" in Section 271(c)(1)(A) does not encompass unbundled elements leased by CLECs. While unbundled elements may be used to supplement a qualifying carrier's facilities, they many not be counted as the carrier's own facilities for the purpose of determining whether a competitor offers services predominantly over its own facilities for the purposes of Section 271(c)(1)(A). Both the 1996 Act itself and the supporting legislative history confirm this interpretation.

As the Commission previously has determined, the 1996 Act embraces three distinct methods for entering the local exchange marketplace: resale, use of unbundled elements, and facilities-based services.[37/] Under Section 271, only one of these entry methods allows a BOC to obtain interLATA authority, that is, facilities-based services. Section 271(c)(1)(A) is quite direct in requiring that a qualifying competitor must offer services either exclusively or predominantly over its "own local exchange service facilities," rather than through the facilities of others. Although a qualifying carrier could use some unbundled elements to supplement its facilities-based network, a carrier cannot meet this requirement by operating predominantly or entirely over facilities that are leased, on a month-to-month basis, from a facilities-based carrier. In fact, permitting unbundled elements to meet the "own local exchange facilities" test would be akin to treating a rental car as if were owned by the driver.

This view is supported by the legislative history as well. The Conference Report repeatedly refers to "facilities-based" competitors, not to competitors using unbundled network elements.[38/] Equally important, the Conference Report makes it plain that network elements are distinguished from a carrier's "own local exchange service facilities":

> This conference agreement recognizes that it is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant. *Some* facilities and capabilities (*e.g.*, central

37/ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499, 15509 (1996).

38/ *See, e.g.*, H.R. Conf. Rep.104-458 at 144.

> office switching) will likely need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251.[39/]

If this were not direct enough, the Conference Report goes on to note that "meaningful facilities-based competition is possible" because of the presence of cable television facilities.[40/] Thus, there is no ambiguity in the Conference Report, which plainly contemplates that a carrier's "own local exchange facilities" means facilities over which the carrier has unfettered control, not mere unbundled network elements.[41/]

39/ *Id.* at 148 (emphasis added).

40/ *Id.*

41/ The Commission has interpreted a similar, but slightly different term ("own facilities") in Section 214(e) to permit a carrier to treat unbundled elements as its own facilities. *See Federal-State Joint Board on Universal Service,* Report and Order, CC Docket No. 96-45, rel. May 8, 1997 at ¶¶ 154-168. There are several crucial distinctions between Section 214(e) and Section 271 that mandate a different conclusion regarding the meaning of Section 271(c)(1)(A). First, the statutory language is different, so the Commission is not constrained to adopt the same interpretation. Indeed, the addition of the phrase "telephone exchange service" is significant because networks elements are not telephone exchange service. Second, as described above and unlike Section 214(e), Congress provided specific guidance on the meaning of Section 271(c)(1)(A), explaining that only true facilities-based providers, such as cable operators, would satisfy the "own telephone exchange service facilities" requirement. Conference Report at 148-150. Third, the structure of the requirement in Section 271(c)(1)(A) differs from the structure of Section 214(e), which required the Commission to broaden the meaning of either "facilities" or "resale" beyond normal usage. *Universal Service Order* at ¶ 157. Finally, different public policy concerns underlie the interpretation of Sections 214(e) and 271(c)(1)(A). As the Commission found in the *Universal Service Order,* permitting eligible telecommunications carriers to use unbundled elements furthers the goal of providing universal service support "to the carrier that incurs the costs of providing service to a customer." *Universal Service Order* at ¶ 162. Treating unbundled elements as a competitor's own facilities for the purposes of Section 271(c)(1)(A), however, would tend to frustrate the Congressional goal of ensuring that there was true competition in place before a BOC entered the in-region interLATA marketplace. Conference Report at 147-148.

CONCLUSION

For all these reasons, Cox Communications, Inc. hereby requests that the Commission act in this proceeding in accordance with Cox's comments and these reply comments.

Respectfully submitted,

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EXHIBIT 1

DECLARATION OF ALEXANDER V. NETCHVOLODOFF

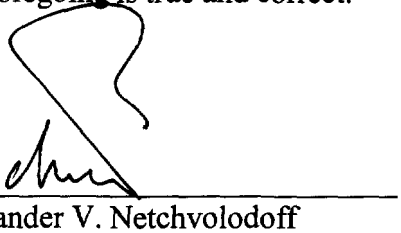
1. I am Alexander V. Netchvolodoff, Vice President, Public Policy of Cox Enterprises, Inc. In my role of coordinating Cox public policy, I am familiar with the plans of Cox's cable television affiliates to provide telecommunications services. This Declaration is being submitted with the Reply Comments of Cox Communications, Inc. ("Cox") on the SBC Communications, Inc. Section 271 application for in-region interLATA authority in Oklahoma.

2. Cox has installed and tested a Northern Telecom DMS-500 switch that will be operated in conjunction with Cox's cable television plant to provide residential and business telecommunications services in areas of Oklahoma City, Oklahoma. Cox intends to provide commercial service to residential and business customers using its upgraded cable television plant before the end of 1997. However, Cox's ability to commence commercial operation is critically dependent upon SBC's willingness and cooperation in providing timely physical collocation, adequate numbering resources, interim number portability and necessary, reliable OSS functionality.

3. Cox also has plans to provide telecommunications services in a number of its cable television markets beyond Oklahoma City, some of which are more advanced than the Oklahoma City implementation. For example, while Cox has experienced interconnection and numbering implementation issues with Pacific Telesis in California, Cox this week is launching interconnected, cable-based telecommunications service to a test group in Orange County, California. Assuming that all goes according to plan, Cox will be offering commercial telecommunications services to both residential and business customers in Orange County in June of 1997.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 27, 1997.



Alexander V. Netchvolodoff
Vice President, Public Policy